



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Robert Arel
441 Central Street
Manchester, NH 03103

R.P.A. Automotive, Inc. d/b/a
Candia Road Auto Center
220 Candia Road
Manchester, NH 03109

Re: Massabesic Lake Watershed,
Manchester, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
NO. AF 2000-01**

January 24, 2000

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Robert Arel and R.P.A. Automotive, Inc. d/b/a Candia Road Muffler and Automotive, pursuant to RSA 149-M:15 and Env-C 601.05. The Division is proposing that a fine of \$1,175 be imposed against Robert Arel and R.P.A. Automotive, Inc. d/b/a Candia Road Auto Center for the violation alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Robert Arel is an individual having a mailing address of 441 Central Street, Manchester, NH 03103.
3. R.P.A. Automotive, Inc. d/b/a Candia Road Muffler and Automotive (Candia Auto) is a corporation having a mailing address of 220 Candia Road, Manchester, NH 03109.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 149-M authorizes the Commissioner of the Department of Environmental Services to impose administrative fines of up to \$2,000 per offense for violations of RSA 149-M.
2. Pursuant to RSA 149-M, the Commissioner has adopted Env-C 610 to establish the matrix by which fines for violations of RSA 149-M will be calculated.
3. On April 28, 1999, Division personnel were contacted by the Manchester Water Works (Water Works) relative to two 55-gallon drums that were abandoned along a roadside cutting

through Water Works property.

4. On April 28, 1999, Officer Gary Sandstrom of the Manchester Watershed Patrol Department, spoke to Robert Arel relative to the drums abandoned on Water Works property. Mr. Arel admitted to Officer Sandstrom that the drums fell off the back of his pickup truck.

5. Mr. Arel further admitted that he had been transporting the drums on behalf of Candia Auto, of which he is the President.

6. The markings on the drums indicated that the drums contained petroleum-impacted soil.

7. On April 29, 1999, Division personnel sampled the contents of one of the drums. The samples were analyzed by the NH Department of Environmental Services Laboratory using EPA test method 8260, Volatile Organic Compounds by Gas Chromatography/ Mass Spectrometry, as described in EPA publication SW-846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Analysis yielded the following results:

<u>Sample No.</u>	<u>Contaminant</u>	<u>Results</u>	
001	1,3,5-Trimethylbenzene	0.080	$\mu\text{g/g}$
	1,2-Dichlorobenzene	0.004	$\mu\text{g/g}$
	p-Isopropyltoluene	0.019	$\mu\text{g/g}$

8. The petroleum-impacted soil does not meet the characteristics or definition of a hazardous waste as set forth in the New Hampshire Hazardous Waste Rules, Env-Wm 100-1000.

9. RSA 149-M:4, XXII defines solid waste as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material. It includes solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities."

10. Env-Wm 2603.01(a) defines contaminated soil as "soils contaminated with liquids not regulated as a hazardous waste, including certain oils, greases, fats, tars and petroleum products."

11. Env-Wm 2603.04 requires that contaminated soils and absorbent media be disposed of only at authorized facilities.

12. The petroleum-impacted soil abandoned on Water Works property is a solid waste as defined by RSA 149-M:4, XXII.

13. The Water Works is not an authorized solid waste facility.

14. RSA 149-M:9, II states that "No person shall transport solid waste to a facility other than a permitted facility."

15. In transporting the petroleum-impacted soil, Robert Arel acted on behalf of and with the full knowledge of Candia Auto.

16. Robert Arel and Candia Auto are jointly and severally liable for the violation alleged below.

IV. Violations Alleged

1. Robert Arel and Candia Auto have violated RSA 149-M:9, II by transporting solid waste to and disposing of solid waste at an unpermitted facility.

V. Proposed Administrative Fines

1. For the violation identified in IV.1. above, a fine of \$1,175 has been calculated pursuant to Env-C 610.

The total fine being sought is \$1,175.

VI. Hearing, Required Response

Robert Arel and Candia Auto have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, February 28, 2000 at 1:00 p.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, Robert Arel and Candia Auto are required to respond to this notice. Please respond no later than February 14, 2000, using the enclosed form as follows:

- 1 If Robert Arel and Candia Auto plan to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.
2. If Robert Arel and Candia Auto choose to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
- 3 If Robert Arel and Candia Auto wish to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Robert Arel and Candia Auto's interest in settling.

Robert Arel and Candia Auto are not required to be represented by an attorney. If Robert Arel and Candia Auto choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Robert Arel and Candia Auto wish to have a hearing but are unable to send an authorized representative to the hearing as scheduled, Robert Arel and Candia Auto must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If Robert Arel and Candia Auto do not notify Mr. Ballentine in advance and do not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Robert Arel and Candia Auto committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Robert Arel and Candia Auto committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

★ Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Robert Arel and Candia Auto prove, by a preponderance of the evidence**, applies in this case:

- 1 The violation was a one-time or non-continuing violation, **and** Robert Arel and Candia Auto did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Robert Arel and Candia Auto did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Robert Arel and Candia Auto were making a good faith effort to comply with the requirement that was violated.
- 3 Robert Arel and Candia Auto have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Robert Arel and Candia Auto's case which was not known to the Division at the time the fine was proposed.

★★★★★ IMPORTANT NOTICE ★★★★★

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Robert Arel and Candia Auto's opportunity to present testimony and evidence that Robert Arel and Candia Auto did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Robert Arel and Candia Auto have any evidence, such as photographs, business records or other documents, that Robert Arel and

Candia Auto believe show that Robert Arel and Candia Auto did not commit the violation(s) or that otherwise support Robert Arel and Candia Auto's position, Robert Arel and Candia Auto should bring the evidence to the hearing. Robert Arel and Candia Auto may also bring witnesses (other people) to the hearing to testify on Robert Arel and Candia Auto's behalf.

If Robert Arel and Candia Auto wish to have an informal meeting to discuss the issues, Robert Arel and Candia Auto must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

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Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If Robert Arel and Candia Auto have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

 **COPY**

Philip J. O'Brien, Director
Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2 1998)

cc Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
City Clerk, Manchester, NH
George Carrigan, Special Investigations Section
Gary Sandstrom, Manchester Water Works